

Department of Planning and Zoning

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, Associate Planner *MO*
Date: July 19, 2011
RE: ZP 11-1080 CU; 1251 North Avenue

Note: These are staff comments only. Decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

File: 11-1080CU

Location: 1251 North Avenue (St. Mark's)

Zone: RL **Ward:** 4

Date application accepted: June 16, 2011

Applicant/ Owner: Tiffany Bergeron / St. Mark's Parish

Request: Conditional Use approval for a Large Daycare serving 30 children, ages 6 weeks to 5 years of age in the previous convent space at St. Mark's Church.

Background:

- **ZP 11-0525CA;** Change of use from convent to group home for 16 residents with 24 hour on site staff counselors. Approved January 2011, **relinquished** by applicant February 2011.
- **Non-applicability of Zoning Permit Requirements 11-507NA** (21 Dodds Court); Interior upgrades, sprinkler, fire alarm. December 2010.
- **Zoning Permit 02-016;** Replace existing portions of the glass block in the cupola portion of the existing church with awning style windows that include a faux glassblock appearance. Approved July, 2001.
- **Zoning Permit 96-568;** Installation of an externally illuminated freestanding sign, 6/5' x 4' for St. Mark's Catholic Church. Approved May 1996.

Overview:

The applicant is seeking approval to open a Large Daycare (by definition, over 20 children) within the former convent space of St. Mark's Parish. The proposal is to serve 30 children ages 6 weeks to 5 years, with 2 infant teachers, 2 toddler teachers, 2 preschool teachers, and 1 program director. (7 employees.)

Recommendation: Approval, per the following findings and conditions:

I. Findings

Sec. 3.5.6 Review Criteria

The application and supporting documentation submitted for proposed development involving Conditional Use and/or Major Impact Review, including the plans contained therein, shall indicate how the proposed use and associated development will comply with the review criteria specified below:

(a) Conditional Use Review Standards: Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on the following general standards:

- 1. The capacity of existing or planned community facilities;*

Activities are proposed to be contained within the existing facility; however community parks, library, and other public infrastructure are sufficient so as to accommodate any demand by a daycare operation. **Affirmative finding.**

- 2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

This is a low-density residential district, which typically has a high demand for childcare services. The site, itself, is a community-oriented facility (although privately owned) and therefore has the capacity to house the proposed use. **Affirmative finding.**

- 3. Traffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to complementing the flow of traffic and/or parking needs; if not in a commercial district, the impact of customer traffic and deliveries must be evaluated;*

Although this is located in a low density residential area, the specific parcel is oriented on a street intersection and has been designed to address public ingress and egress due to its primary mission as a worship facility capable of accommodating large groups. In that manner, traffic flow and parking needs do not present a problem for the proposed use, especially as the daycare facility will be active on an alternate schedule / days from the worship services. **Affirmative finding.**

- 4. Any standards or factors set forth in existing City bylaws and city and state ordinances;*

The proposal is within the standards outlined in this report, with noted factors.

- 5. The utilization of renewable energy resources;*

No part of this proposal prevents the use of alternative energy resources. **Affirmative finding.**

and,

In addition to the General Standards specified above, the DRB;

- 1. shall consider the cumulative impact of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible;*

This is a site that regularly accommodates an ebb and flow of public attendance. The proposal for a large daycare will exercise use of an underutilized facility with accommodations for the

public while being situated in a residential area that is desirous of the services provided.

Affirmative finding.

7. in considering a request relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, RL-W, RM and RM-W districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green space standards must be observed.

Not applicable.

8. may control the location and number of vehicular access points to the property, including the erection of parking barriers.

The parking access and lot are existing. No change is proposed. **Affirmative finding.**

9. may limit the number, location and size of signs.

There is no request for signage within the application. Any sign must secure an independent sign permit. **Affirmative finding as conditioned.**

10. may require suitable mitigation measures, including landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

The children's play area is proposed for a courtyard. This does not appear to present any impact that would require landscaping or other buffer measures. **Affirmative finding.**

11. may specify a time limit for construction, alteration or enlargement of a structure to house a conditional use.

No construction is proposed. **Not applicable.**

12. may specify hours of operation and/or construction to reduce the impact on surrounding properties.

No construction is proposed. The proposed hours of operation (7:30 am – 5:30 pm) are within the limits set by Footnote 13, Appendix A, Use Table, CDO (5:30 am – 11:00 pm.) **Affirmative finding.**

13. may require that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.

This is a statutory requirement. **Affirmative finding.**

14. may consider performance standards, should the proposed use merit such review.

Footnote 13 of Appendix A, Use Table of the Comprehensive Development Ordinance limits hours of operation for a Large Daycare in the RL zone to 5:30 am - 11:00 pm. The applicant has indicated the intended hours are intended to be 7:30 am to 5:30 pm., so further limitation is not necessary. **Affirmative finding.**

15. may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

This is left to the discretion of the board.

Article 8: Parking

Table 8.1.8-1 Minimum Off-Street Parking Requirements

Daycare – Large (Over 20 children)

Requirement: (per two (2) employees)	Neighborhood Parking District	1 parking space per 2 employees	plus 1 parking space per 5 children	Total parking requirement
Proposal – 7 employees	Neighborhood Parking District	7 employees; or 4 parking spaces required.	30 children / 5 = 6 parking spaces required	4 & 6 = 10 parking spaces

10 parking spaces are indicated in the submission materials. This should not be a problem, as the daycare is proposed for operation when the worship facilities are not in use. Rev. Giroux of St. Mark's has confirmed dedication of parking for the proposed daycare use, and has underlined the dual use of the parking lot allows the availability of additional parking. **Affirmative finding.**

Article 9: Inclusionary and Replacement Housing

Sec. 9.2.2 Applicability

*Except as otherwise provided for in Section 9.2.10, this part is applicable to the loss, demolition, or **conversion to a nonresidential use** of any housing unit in the City, including those demolish or declared unfit for habitation pursuant to any order, decision or other action of the city's office of inspection services.*

The request to convert a portion of the convent to a Large Daycare requires assumption of two bathrooms, a kitchen and common areas; effectively leaving only the sleeping rooms (cells) of the convent. Without other accommodations, these no longer retain enough utility to accommodate normal living activities, and cannot on their own be considered a residential unit. Therefore, **Housing Replacement review applies.**

*The conversion to a nonresidential use of any housing unit located on the ground floor of a building within a mixed-use zoning district shall be exempt from the provisions of this part. This is a low-density (RL) zone, so this provision does not apply. **Not applicable.***

Sec. 9.2.3 Conditional Use Approval

Notwithstanding any other provision of this ordinance, a person who proposes to remove, demolish, or to convert to a nonresidential use, any housing unit or units, in a zone where such a use is otherwise permitted, must first obtain conditional use approval from the development review board pursuant to the provisions of Article 3, Part 5.

In addition to the permit application requirements contained in Article 3, the applicant must also submit:

- a) A statement certifying the number of housing units to be demolished or converted to a nonresidential use and the number of bedrooms existing within each of these units;*

One housing unit (a congregant dwelling unit) is proposed for conversion. No bedrooms are included within the proposed square footage to be converted.

and

- b) *A list containing the name of each tenant currently residing in the housing units to be demolished or converted, as well as verification by affidavit of compliance with the tenant notice requirements of this section.*

At present the current dwelling unit is vacant; no tenants are proposed for eviction or relocation.

Sec. 9.2.5 Housing Replacement Requirement

In addition to applicable requirements for a conditional use, the DRB shall require, as a condition of approval, that an owner shall replace any housing units that are demolished or converted to a nonresidential use.

An owner shall meet the replacement requirement by creating new housing units pursuant to a plan approved by the DRB. The plan shall be in accordance with the provisions of this Article. Replacement units may be provided by the owner or by the owner's designee fully in any of the following ways:

- a. New Construction. Construction of housing units within a new structure or new addition;*
- b. Residential Conversion. Conversion of all or a portion of a nonresidential building to residential use; or*
- c. Subsidy. Creation of affordable housing units that have not been affordable to low-income households for the twenty-four (24) months preceding the date of application for conditional use approval.*
- d. An applicant may use any of the three methods to partially fulfill their replacement requirements, until the total requirement is met, subject to approval by the DRB.*

Sec. 9.2.9 Relief

*Any owner who has applied for conditional use approval for demolition or conversion of a housing unit or units **may apply to the DRB for relief** from the housing replacement requirements of Section 9.2.5. Such relief **may** be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:*

- a) the literal interpretation and strict application of the housing replacement requirement would be impossible for the owner;*

The property owner, as a religious institution, is not characterized as owning residential property. The convent is a distinctly different residential arrangement specific to the mission of the religious denomination. **Affirmative finding.**

- b) the requested relief would be consistent with the spirit and purpose of this Article;*

This application does not result in the loss of a publicly available housing unit. There is a clear distinction that this residential facility is intended to serve a specific and limited community, and therein has well-defined limitations for use. The conversion of this housing unit to a daycare neither removes a residential unit from public use, nor impinges the religious community (who has additional congregant housing availability at Mt. St. Mary's on Mansfield Avenue.) **Affirmative finding.**

and

- c) *The requested relief does not constitute a grant of special privilege inconsistent with the limitations upon similar properties.*

The uniqueness of the residential unit (as a congregant dwelling unit for a religious order) and the specific limitations of its characteristic use make it difficult to find similar properties for the purposes of comparison. The special identity and purpose of the dwelling, and its availability due to diminishing numbers of potential tenants and relocation of remaining sisters, create an exceptional situation. In that no public housing units are proposed for conversion and the exclusive rights to use the dwelling by a distinct worship community, no special privilege may be acknowledged with issuance of relief from this requirement.

Affirmative finding.

The DRB must make positive findings on each of the three (3) criteria above in order for any such adjustment to be valid.

In any event, this standard states that the housing replacement requirement *MAY* be extended by the DRB. While the standard language mentions a specific percentage of relief, the lack of language requiring that degree (“*may*”, versus “*shall*”) offers the board flexibility in consideration of relief and the degree. Upon such interpretation, cognizant of the unique circumstances and partial use of the dwelling, relief from housing replacement standards may be entertained for this request. **Affirmative finding as conditioned.**

Sec. 9.2.10 Exemptions

This article, except for Section 9.2.4, pertaining to conditional use approval, shall not be applicable to:

- a. *A loss or change of use lasting less than one year, where residential use is restored within that same one year period, shall not be subject to the replacement requirements of this part.*

The application to convert to a non-residential use is not intended to have the one-year time limitation.

- b. *Any housing unit ordered demolished or declared unfit for habitation by the office of inspection services because of damage caused by civil commotion, malicious mischief, etc.*

The convent has not been ordered to be demolished or been declared unfit for habitation.

- c. *The demolition or conversion to a nonresidential use of a single attached or detached housing unit or duplex that is occupied by the owner as his or her primary residence for the twelve month period preceding the date of application for conditional use approval...*

The property is owned by the diocese of Burlington, with Bishop Salvatore Matano as representative. Neither Bishop Matano, nor the parish priest has been in residence at this dwelling unit; therefore this exemption does not apply.

- d. *The demolition or conversion of a housing unit that has rented, for the twenty-four months preceding the date of application for conditional use approval, for a monthly charge in excess of twice the HUD fair market rent for Burlington MSA, adjusted for unit size.*

This is not a luxury housing unit and has not been rented for the specific rate within the last twenty four months.

The subject application does not meet these exemptions from Housing Replacement.

Article 13: Definitions

Dwelling Unit (or Housing Unit): A room or set of rooms fitted with a private bath, kitchen, and living facilities comprising and independent, self-contained dwelling space occupied by a family and where rooms are not let to individuals. Kitchen, living and shared bathroom facilities must be separate and distinct from bedroom facilities.

As the application proposes to convert living area, kitchen and bathrooms to a non-residential use, this renders the existing dwelling unit incomplete and requiring review of housing replacement standards. **Affirmative finding.**

II. Recommended Conditions of Approval:

1. Per Affirmative Findings on Sec. 9.2.9. of the Comprehensive Development Ordinance, Relief from the requirement of housing replacement is extended for conversion of a portion of the convent to a Large Daycare.
2. Impact fees: As the rates for residential use are greater than that for “other” (Daycare), no additional Impact Fees are warranted for the change-of-use. (See attached calculation.)
3. Hours of operation are limited to 5:30 am – 11:00 pm, per Footnote 13 of Appendix A, Use Table of the CDO, relative to conditional use review of a Large Daycare in the RL zone.
4. Standard Permit Conditions 1-18.

NOTE: These are staff comments only. The Development Review Board, who may approve, table, modify, or deny projects, makes decisions.

Frog & Toad
Child Care & Learning Center

RECEIVED

JUN 16 2011

"The place where children love to learn."
538 Bean Road & 512 Troy Avenue Colchester, Vermont 05446
(802)864-7150 or (802)654-7182
tbergeronmonkey@yahoo.com

DEPARTMENT OF
PLANNING & ZONING

To Whom It May Concern:

June 14, 2011

My name is Tiffany Bergeron. I am the owner/director of Frog&Toad Child Care&Learning Center. This is to satisfy the requirements of the conditional use application.

- *Enclosed you will find the completed application form.
- *Enclosed you will find the check for \$135.00 to pay the application fee.
- *I plan to use the current convent space of Saint Mark's Convent to care for and educate 30 children between the ages of 6 weeks and 5 years of age on a full year basis.
- *My program will operate Monday through Friday from 7:30am-5:30pm.
- *My program will consist of 2 infant teachers, 2 toddler teachers, 2 preschool teachers, and 1 program director.
- *Traffic during peak times will be kept to a minimum by serving many families already in the community that will be able to bike or walk to our facility as well as hiring some staff members that live within walking/biking distance. We will also stagger the times that families and staff arrive to and depart from our program in an effort to keep traffic influx to a minimum. Further, Saint Mark's Parish has allotted us 10 parking spaces on their grounds so that there will be no on street parking required for our program.
- *Attached you will find floor plans indicating the space within Saint Mark's Convent that my program will operate.
- *In terms of a phasing schedule, we hope to begin operating at this location by November 1, 2011.
- *Regarding Section 3.5.6(b); 1. The space was previously intended to be used as a convent serving a large group of women on a full-time basis. Our program is only in operation 10 hours per day, will not provide baths/showers, and so therefore will not result in any undue water pollution or burden, we do not create any sort of air pollution, and the joyful sounds of children's laughter and play hardly constitutes noise pollution. 2. The facility is equipt with a full kitchen and two bathrooms which will meet our water needs. 3. See 1 and 2 above. 4. The only time the soil will be affected is when the children play on it. We will not be removing any soil or reduce the capacity of the land. Our intention is to have small container gardens with the children, but to otherwise leave the land exactly as is. 5. Saint Mark's Parish has ample parking, an easily accessible entrance, and an exit that leads directly to a traffic signal. We also plan to stagger the arrival and departure times of the families and staff in our program to eliminate any congestion and/or unsafe conditions. 6. Since Frog&Toad Child Care&Learning Center is a state licensed child care facility focusing on the Early Education of young children the city would be INCREASING its ability to provide educational services. 7. This preschool program will have no more impact than the

previously approved convent and so will not prevent the city from providing municipal services. 8. Since my program is seeking to be located within an already existing building there will be no adverse affects on the beauty or significance of the city of Burlington. 9. Frog&Toad Child Care&Learning Center intends to pay a monthly lease to the already existing Saint Mark's Parish, and so our program will not have an adverse affect on the city's ability for future growth. 10. We will be in compliance with the city's municipal development plan. 11. Saint Mark's Convent is an already existing building, and our operation at this site will not impede the housing needs of the city. 12. Saint Mark's Convent is an already existing building and will not have an adverse affect on the parks and recreation needs of the city.

*Additional information will be provided to the Administrative Officer at their request.

Sincerely,



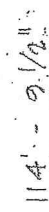
Tiffany Bergeron - Owner/Director
Frog&Toad Child Care&Learning Center

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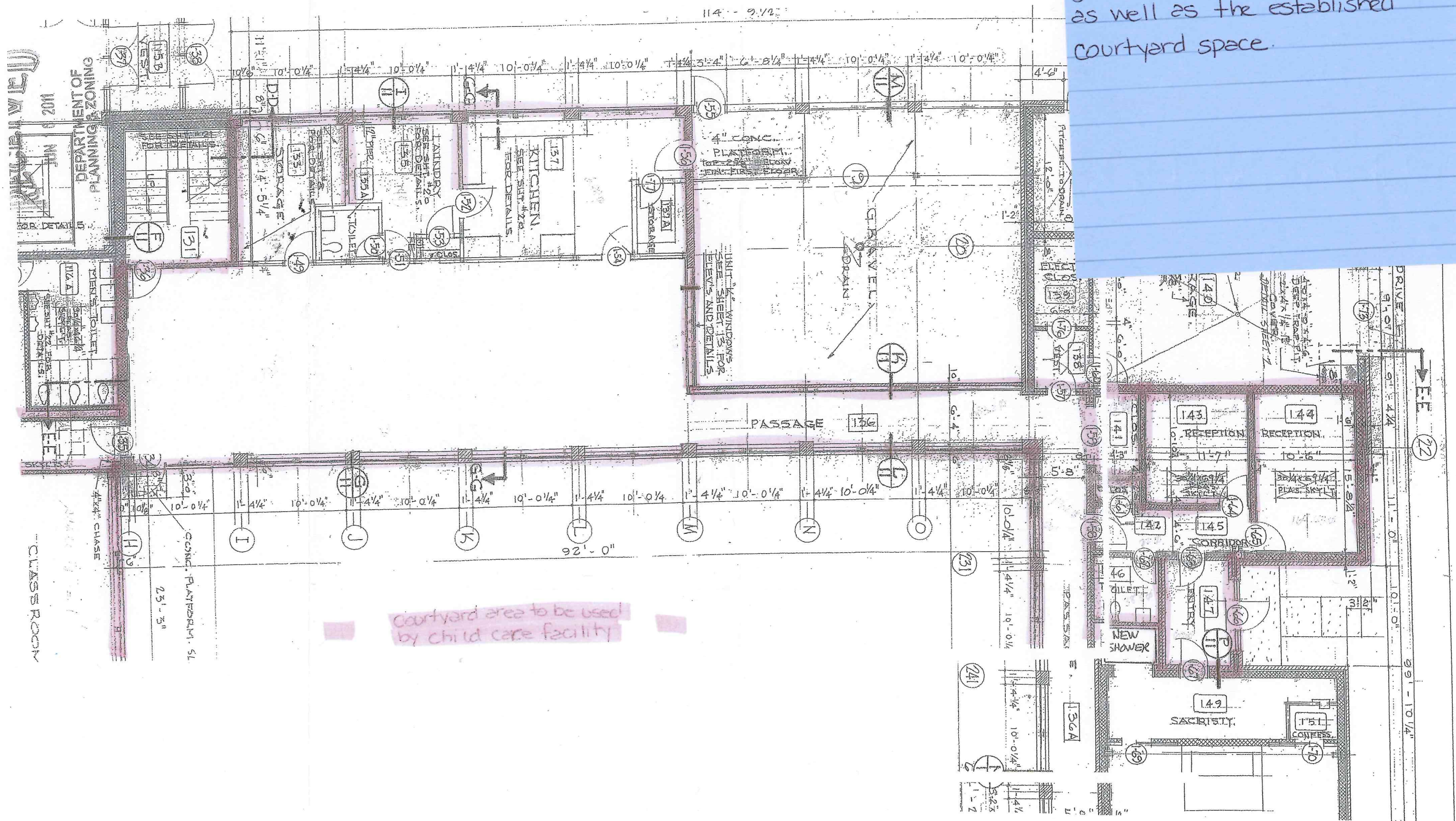
DEPARTMENT OF
PLANNING & ZONING

(P)



UNCLASSIFIED

child care facility to use only PL
ground level of convent space
as well as the established
courtyard space.



Courtyard area to be used
by child care facility

DEPARTMENT OF
PLANNING & ZONING

CLASSROOM

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